




Partly Cloudy, 60°  
5 day forecast





 Search

## SITE MENU:

Select...

[Home](#) > [Opinions](#) > Supreme Court just passing the buck on Clean Water Act

Wednesday, June 21, 2006

 [E-mail](#)
 [Print](#)

## Supreme Court just passing the buck on Clean Water Act

Web-posted Jun 21, 2006

### EDITORIAL

To the U.S. Supreme Court: Thanks, but no thanks. While it is appropriate that Michigan - the nation's premier water wonderland - be the source of a landmark water rights case, it's unfortunate that the outcome effectively was a tie.

The case is the Midland-area dispute over where the federal Clean Water Act ends. Midland developer John Rapanos had filled in a drainage ditch far from - but in vicinity of - the Tittabawassee River, Saginaw Bay and Lake Huron. Because it was on his own property, he had not obtained a permit.

The U.S. government sued, claiming a violation of the act. A lower federal court concluded that the ditch came under the act's definition of "navigable waters."

Now, the Supreme Court has voted, four with Rapanos and four against, with one justice essentially deciding the lower courts would have to handle the definition on a case-by-case basis.

In other words: A property owner's right to modify anything from a wetland on up will be whatever the Army Corps of Engineers says it is, which essentially has been the situation this suit aimed to clarify.

The four justices considered conservative sided with Rapanos in claiming a clear limit on the reach of the Clean Water Act. The liberals backed the government's interpretation that a water resource did not have to be even near navigable waters to be federally regulated.

Advertisement



EarthLink®  
HIGH SPEED INTERNET

Spring High Speed Special:

**\$12.95**  
/MO.

Up to 4X faster than regular DSL.

spring!

Limited time offer - As low as \$12.95/mo. for 6 mos.

### TOP JOBS

#### BOOKST ASSISTANT

(3) POSITI  
Community  
currently se  
application:  
tim.....

#### Lab Aid/ Full-time

located wit  
Hospital. A  
MT/MLT (/ preferred, i

#### DIRECTOR STUDENT

MANAGEN  
College loc  
MI seeks s  
will embrac  
attitu.....

 [View](#)

### TOP AUTO

 [View TopA](#)

### TOP HOME

#### PONTIAC

& 1 bdrm.,  
248-338-08

#### FERNDAL

fenced yar  
bsmt. \$750  
2432...

#### CLARKS' complex

& 2 bdrm. i  
water, stor  
Specials b  
\$570.00 24

 [View TopH](#)



The controlling opinion, by Justice Anthony Kennedy, says that to be under federal regulation, a wetland would have to significantly affect a body of navigable water.

As a practical matter, the definition of significant will continue to be made by the government on a case-by-case basis.

Both liberal and conservative critics of the decision, or non-decision, argue that the court's ruling basically puts the question back before the Congress.

We all know the habit of our representatives and senators to pass sweeping legislation, with the expectation that its clear meaning eventually will be decided by judges refereeing disputes.

It's a lazy way to do business. It's nothing more than basking in glowing headlines of having "acted," when in fact the lawmakers only have kicked the can down the street. There, Americans injured financially or worse must spend small fortunes attempting to establish their rights under the Constitution.

That is precisely where the Clean Water Act has been, and will stay, under this nondecision.

The Rapanos case is sort of constitutionally prohibited ex post facto law - do something and then we'll decide whether it's legal or not.

The Supreme Court's unseemly ruling also illustrates its lack of collegiality. In this era of justice-by-law-clerk, court employees do the research for and writing of opinions. Then, with little or no debate, the votes are counted and chips fall where they may. This case appears to be a bad example of that process.

A court may be deadlocked as a matter of principle or as a result of not comparing notes in the course of an honest attempt to truly settle a question.

We deserve much more than this from such a vital branch of government.

THE OAKLAND PRESS

 [E-mail](#)  [Print](#)

---

[Feedback](#) | [Contact Us](#) | [Place A Classified Ad](#) | Copyright © 2006 The Oakland Press. All Rights Reserved |